

# United States District Court District of Massachusetts

JOSE PARRA,  
Petitioner,

v.

CRIMINAL NO. 06-40009-FDS

UNITED STATES OF AMERICA,  
Respondent.

## *REPORT AND RECOMMENDATION ON MOTION FOR SENTENCE REDUCTION PURSUANT TO 18 U.S.C. [sic] 3582(c)(1)(B) AND [sic] 3582(c)(2) (#120)*

COLLINGS, U.S.M.J.

Petitioner Jose Parra (“Parra”) seeks a reduction in the sentence imposed upon him on July 19, 2010. He seeks relief based on the Fair Sentencing Act of 2010 (“FSA”), 124 Stat. 2372, which became effective of August 3, 2010. Because the FSA became effective after he was sentenced, Parra is not entitled

to relief. *United States v. Goncalves*, 642 F.3d 245, 251-55 (1 Cir.), *cert. denied*, \_\_\_ U.S. \_\_\_, 132 S.Ct. 596 (2011). This ruling was reaffirmed in the case of *United States v. Santos-Rivera*, 726 F.3d 17, 28-39 (1 Cir.), *cert. denied sub nom. Diaz-Correa v. United States*, \_\_\_ U.S. \_\_\_, 134 S.Ct. 1347 (2013). In the *Santos-Rivera* opinion, the First Circuit acknowledged the Supreme Court’s decision in *Dorsey v. United States*, \_\_\_ U.S. \_\_\_, 132 S.Ct. 1321 (2012) that the “. . . FSA applied to defendants who were sentenced after August 3, 2010, regardless of the date of their conduct offense or the date of. . . entry of guilty plea.” *Santos-Rivera*, 726 F.3d at 28, n. 2 citing *Dorsey*, 132 S.Ct. at 2335.

As stated by the Sixth Circuit in an *en banc* decision rendered at the end of last year in the case of *United States v. Blewett*, \_\_\_ F.3d \_\_\_, 2013 WL 6231727 (6 Cir., Dec. 3, 2013), *cert. denied*, \_\_\_ U.S. \_\_\_, 134 S.Ct. 1779 (2014)(*en banc*):

Consistent with a 142-year-old congressional presumption against applying reductions in criminal penalties to those already sentenced, 1 U.S.C. § 109, consistent with the views of all nine Justices and all of the litigants in *Dorsey v. United States*, \_\_\_ U.S. \_\_\_, 132 S.Ct. 2321, 2332, 183 L. Ed.2d 250 (2012), consistent with the decisions of every other court of appeals in the country, and consistent with dozens of

our own decisions, we hold that the [FSA] does not retroactively undo final sentences.

*Blewett*, 2013 WL 6231727, at \*1.

In sum, the FSA is simply not applicable to persons such as Parra who were sentenced before August 3, 2010; the law is uniform on this point and dooms Parra's motion.

Parra also makes an 8<sup>th</sup> Amendment argument that the disparity between crack and powder cocaine amounts to cruel and unusual punishment. The First Circuit has rejected the argument. *United States v. Garcia-Carrasquillo*, 483 F.3d 124, 134 (1 Cir., 2007). And more recently, the Sixth Circuit sitting *en banc* did so also. *Blewett*, 2013 WL 6231727, at \*\*11-13. The Sixth Circuit in the same case rejected the equal protection argument. *Blewett*, 2013 WL 6231727, at \*11.

For all the reasons stated, I RECOMMEND that the Motion for Sentence Reduction, Etc. (#120) be DENIED.

***Review by the District Judge***

The parties are hereby advised that pursuant to Rule 72, Fed. R. Civ. P., any party who objects to this recommendation must file a specific written objection thereto with the Clerk of this Court within 14 days of the party's receipt of this Report and Recommendation. The written objections must

specifically identify the portion of the recommendation, or report to which objection is made and the basis for such objections. The parties are further advised that the United States Court of Appeals for this Circuit has repeatedly indicated that failure to comply with Rule 72(b), Fed. R. Civ. P., shall preclude further appellate review. *See Keating v. Secretary of Health and Human Services*, 848 F.2d 271 (1 Cir., 1988); *United States v. Emiliano Valencia-Copete*, 792 F.2d 4 (1 Cir., 1986); *Scott v. Schweiker*, 702 F.2d 13, 14 (1 Cir., 1983); *United States v. Vega*, 678 F.2d 376, 378-379 (1 Cir., 1982); *Park Motor Mart, Inc. v. Ford Motor Co.*, 616 F.2d 603 (1 Cir., 1980); *see also Thomas v. Arn*, 474 U.S. 140 (1985).

/s/ Robert B. Collings

ROBERT B. COLLINGS  
United States Magistrate Judge

May 14, 2014.